

PT 05-15

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

EDGEWATER COMMUNITY COUNCIL, INC.

Applicant

v.

**DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

) 04 PT 0017

) (02-16-2979)

) PIN 14-05-125-069-0000

)

) Mimi Brin

) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: David Gray, on behalf of Edgewater Community Council, Inc.; Marc L. Muchin, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

Synopsis:

In August, 2003, Edgewater Community Council, Inc. (hereinafter "ECC") filed an Application for Non-homestead Property Tax Exemption with the Illinois Department of Revenue (hereinafter "Department") for property located at 6044 N. Broadway, Chicago, Illinois (hereinafter "subject property") for the tax year 2002 (hereinafter "tax year"). The exemption request was made pursuant to §15-65 of the Property Tax Code, 35 ILCS 200/1 *et seq.* (hereinafter "Code") The Cook County Board of Review had previously recommended that an exemption be given for the 2nd floor of the subject property for the entire tax year, and that an exemption be given for the entire first floor from 7/22/02 through 12/31/02. Department Ex. No. 1 Subsequent to its review, the Department denied any exemption for the subject property for any part of the tax year.

Department Ex. No. 2 ECC protested the Department's denial and the matter came to hearing, whereat the parties presented evidence. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

Finding of Fact:¹

1. On February 13, 2004, the Department denied ECC's Application for a Non-homestead Property Tax Exemption for the tax year 2002 for the property located at 6044 N. Broadway, Chicago, Illinois on the basis that the subject property was not in exempt ownership or exempt use during the tax year. Department Ex. Nos. 1, 2
2. The subject property is a two (2) story building, with a partial basement, totaling 2000 square feet of ground area. Department Ex. No. 1; Stip.Gr. Ex. p. 4²
3. ECC obtained ownership of the subject property via a warranty deed, on September 10, 2001. Stip. Gr. Ex. pp. 59-60
4. ECC was incorporated in January, 1960 in the State of Illinois, pursuant to the Illinois General Not For Profit Act. Stip. Gr. Ex. pp. 48-52
5. The goal of the ECC is to "promote the welfare of all residents of our community, regardless of their race color, creed or national origin, and without regard to political party, so that all people in Edgewater may have the opportunity to find health, happiness and security through the democratic way of life." Stip. Gr. Ex. p. 34 (By-laws Article II)

¹ Unless otherwise noted, all Findings of Fact and Conclusions of Law refer to the tax year 2002.

² The parties stipulated to the admission into evidence of certain documents herein referred to as "Stipulated Gr. Ex. p. ". Tr. pp. 4-6

6. The boundaries of the area served by ECC are Foster Avenue on the south, Devon Avenue on the north, Ravenswood Avenue on the west and Lake Michigan on the east. Stip. Gr. Ex. p. 35 (By-laws Article III);
7. ECC is a membership organization that is open to any person, business, professional or non-profit organization that lives, works, owns property or is interested in the area served by the ECC, and who is “desirous of cooperating with and participating in the work of the ECC... .” Stip. Gr. Ex. pp 27, 29, 33, 35 (By-laws Article IV)
8. ECC charges membership dues. Id.
9. ECC is governed by a 36 member Board of Directors, elected by the members of ECC. Stip. Gr. Ex. pp. 35-6, 38-40 (By-laws Articles V, VIII)
10. ECC is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Stip. Gr. Ex. pp. 42, 45
11. On November 15, 2002, the City of Chicago Zoning Board of Appeals approved ECC’s application for a special use of the subject property appropriate for a community center. Stip. Gr. Ex. pp. 43, 44
12. Applicant began adapting the second floor of the subject property in February, 2002, and began operating in the space on the second floor in May, 2002. Stip. Gr. Ex. p. 12 (roof repair and alarm system for second floor, start-up date 2/14)
13. Space on the second floor was also used by the Edgewater Development Corporation (hereinafter “EDC”). Tr. pp. 23-4, 68-9

14. A hold-over tenant occupied the first floor of the subject property throughout most of 2002, during which time applicant legally pursued eviction of this tenant. Tr. pp. 58-9, 67-8
15. Adaptation of the first floor of the subject property did not begin until 2003. Tr. p. 67

Conclusions of Law:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its authority granted under the Constitutional, the General Assembly enacted specific exemptions to the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.* (hereinafter referred to as the “Code”). ECC claims exemption from property tax pursuant to section 15-65 of the Code. Section 15-65 of the Code states, in relevant part:

§ 15-65 Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
(a) institutions of public charity.

Thus, the statutory requirements for this exemption are that: (1) the property is owned by an entity that qualifies as an “institution of public charity” and, (2) the property is actually and exclusively used for charitable purposes. Id.; Methodist Old People’s Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968); Institute of Gas Technology v. Department of Revenue, 289 Ill. App.3d 779, 783

An “institution of public charity” operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise relieves the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893) It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People’s Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968)

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 466 (2nd Dist. 1995) Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987)), or operates primarily in the public interest and lessens the State’s burden. (DuPage County Board of Review, *supra*; Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000))

The Department’s position is that the applicant has failed to show that it is a charitable institution, and, further, that it failed to show that it used the subject property for charitable purposes during the tax year at issue. Several of the Department’s

arguments are that the primary source of applicant's funding is not from public or private charity, that the first floor was not in charitable use during any part of the tax year and that the second floor was only occupied by applicant from May, 2002. In addition, the Department's position is that actual use of the property must be considered, as opposed to ECC's position that it's intention to use the premises for its purposes is sufficient for the grant of exemption. Based upon the evidence of record, I concur with the Department.

On the issue of whether ECC is a charitable institution, it is clear that ECC has no capital stock or shareholders. Unfortunately, however, this applicant neglected to make any credible offering as to its finances. Because it did not make a showing of any financial statements, it is impossible from this record to ascertain the primary source of its income and how it spends its funds. The record is devoid of any information as, for example, how many and how much its employees are paid.³ Whereas witness, Clare Tobin, did testify that grants covered 60 percent of applicant's funding, and the remainder had to be raised through fund-raising efforts wherein a fee is required for participation (Tr. pp. 64, 71-2), the same witness testified that the "Stetson Fund" was a major donor of Care For Real. Tr. p. 60 However, minutes from the Board of Directors regular meeting of December 18, 2001 indicate that there was some type of a loan agreement between ECC and the Stetson Fund. Stip. Gr. Ex. p. 6 Thus, I am unable to accept as competent Ms. Tobin's unsubstantiated testimony regarding the percentage of funding from grants. These examples are illustrative of questions needing clarification, at the least. Certainly, a financial statement should have clarified and answered any basic questions regarding funding sources and expenditures, but none was made available for review.

³ ECC had eight staff people in 2002. (Tobin, Tr. p. 57)

What is clear is that ECC is a membership organization wherein the members vote for a Board of Directors which makes decisions as to what activities applicant undertakes. There is no evidence that membership fees are waived, in fact, the by-laws provide that “[m]embers shall be considered in good standing when their dues are not in arrears”. Stip. Gr. Ex. p. 35 (Article IV, sec. 6); Tr. p. 69 (membership dues not waived to persons without the ability to pay (Tobin)) While it is true that applicant invites the community at-large to its Board of Directors meetings (Stip. Gr. Ex. p. 27), there is no competent evidence that non-members are permitted to vote on any issues or to mandate that the Board take under consideration any issue of concern to them, including any political issues pursued by applicant.⁴

It is also not clear that non-members can meaningfully participate on committees. Although the evidence provides that non-members may become advised that applicant’s committees “usually meet monthly”, the advisement states that “ECC members participate in a monthly Planning and Development Committee meeting... .” (emphasis added) Stip. Gr. Ex. p. 28; Tr. pp. 31-2 (Rae Ann Ceerle)⁵ Again, it is reasonable to conclude that in order to meaningfully participate at the committee level, one must be a member. Thus, while non-members may benefit, ultimately, from ECC activities, members make the determinations as to what activities are undertaken and what political issues are pursued. Benefits from applicant’s activities, therefore, primarily inure to its

⁴ Examples of political issues on ECC’s agenda: A commercial entity appeared and requested that the Board consider “a lifting of the moratorium to permit a packaged goods liquor license at the Pan-American Supermarket-5746 N. Clark. A motion was made and seconded to make a statement that the board position in this matter is unchanged. The board continues to support the moratorium.” Stip. Gr. Ex. p. 6 Applicant was active in passing the 7 percent tax cap initiative, secured petitions for the preservation of the Broadway Armory and brings issues to the attention of the alderman. (Tobin, Tr. p. 65)

⁵ Tobin testified (Tr. p. 64) that a non-member can vote at a committee meeting, however, from the evidence of record I must conclude that if this is true, the general public is unaware of this.

members. See generally Institute of Gas Technology v. Department of Revenue, 289 Ill. App.3d 779 (1st Dist. 1997)

In the same vein, one of applicant's activities includes the ECC Summer Arts Camp, a six-week program located at a public park. Stip. Gr. Ex. p. 31 It is plain from the document in evidence that while it is a free program, it is only open to "eligible youth." There is nothing in the record to explain what qualifies a child as "eligible". However, a determination of eligibility is required before the child is "accepted" and "invited to an orientation meeting". Id. This appears to be a major program, yet there is nothing of record showing that it is of a charitable nature.

It is because there are such significant evidentiary voids in this record that I am unable to conclude that applicant is an institution of public charity qualified to have its real property exempt from taxation. Since the pertinent statute requires that property be in exempt ownership as well as exempt use, I cannot recommend that the Department's determination disallowing exemption be altered.

Even if ECC could be found to be an exempt entity, the Department's determination would remain valid for the most part. The law does provide that if an exempt entity begins developing the property for an exempt use, the exemption may apply from the onset of these preparations. Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987) (part of medical facility that was under active construction during tax year in question held exempt) In this matter, the competent evidence is that the second floor space was actually used by ECC from May, 2002, with the work to prepare the area beginning February 14, 2002. Stip. Gr. Ex. pp. 7 (Board of Directors Meeting January 15, 2002 (floor plan developed for second floor, but no budget

developed, no materials received, no permits received, no construction contract signed due to “insurance issues”), 12 Thus, even if this applicant qualified as an institution of public charity, any exemption for the second floor area would apply from February 14, 2002. There is present, however, an additional evidentiary problem.

Edgewater Development Corp. is an entity that has its own corporate identity. Tr. p. 24 The executive director and the president of ECC have the opportunity to sit on the EDC board. Tr. pp. 25-6 The EDC concerns itself with commercial development within the Edgewater area. Tr. p. 25 Nothing other than these few facts are of record regarding the EDC. There is no way of knowing from this record whether EDC has anything other than a political agenda benefiting retail or commercial businesses in the area. Therefore, it cannot be concluded that this entity has any characteristics of being an institution of public charity. In 2002, the EDC occupied an office on the second floor of the subject property. Neither Tobin or Cecrle specified that space either in size or specific location other than to say it was either ten percent (Tr. pp. 23-4 (Cecrle)) or as much as twenty percent (Tr. pp. 69, 72-3 (Tobin)) of the second floor office space.⁶ Nor was there any information as to whether this separate corporation pays rent to ECC for the space used. Because it cannot be determined what space was used by this non-charitable entity, it cannot be removed from any calculation of exempt property even if ECC qualified as an exempt organization. Whereas the law does not permit exemption by default, unless the space used by EDC is identified, the nature of the activities of EDC are evaluated and the issue of any consideration being paid for the use of the space, it is inappropriate to

⁶ These witnesses also testified that EDC used the kitchen, bathroom and conference rooms facilities. Tr. pp. 24, 69

consider how much, if any, of the second floor might be exempted even under the best case scenario for this applicant.

In addition, the most competent evidence of record is that ECC did not begin preparing the first floor of the subject property for use until January, 2003. When applicant purchased the property, there was a tenant on the first floor, which did not vacate the premises at the end of its lease. ECC enforced its rights against this tenant through legal eviction proceedings and the tenant vacated the first floor in July, 2002. Tr. p. 67 (Tobin) From July until December, the first floor space was vacant. Id. During that time, ECC had to apply for grants and “get our contract approved.” Id. Renovation on the first floor space did not begin until January, 2003. Tr. pp. 67-8

The Care for Real program, operated by the ECC (Tr. p. 77), occupied the first floor of the subject property following renovation. Applicant argues that the exemption of the first floor space should be allowed for 2002 because it was always intended to be used for exempt purposes and “but for that holdover tenant they would have started the renovations earlier... .” Tr. p. 84 (closing argument)

An examination of the law does not allow this “but for” argument to prevail. In Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971), the court granted an exemption for a portion of a 107 acre tract used by the school for educational purposes. In denying an exemption for the rest of the property, the court stated:

In arguing that the entire tract should be exempt, plaintiff proposes that its intention to develop in the future a complete satellite campus, fully utilizing the entire 107 acres, should qualify the property for exemption. However, the constitution and statute permit exemption only on the basis of a qualifying use. We have often held that property must be in actual use for the exemption purpose, to qualify for exemption. ‘(E)vidence that land was acquired for an exempt purpose does not eliminate the

need for proof of actual use for that purpose. Intention to use is not the equivalent of use.’ (citations omitted)

Id. at 64; see also Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994)

It was physically and legally impossible for ECC to use any of the first floor space while the holdover tenant was in occupancy. It was also legally impossible for ECC to begin necessary renovations of that space until, at the earliest, the tenant was evicted. That did not occur until July, 2002. In addition, the renovations did not begin until finances were in place and the intended use of the space was approved by the controlling governmental body. That did not occur until November 15, 2002. Stip. Gr. Ex. pp. 43-4 (variation in the nature of a special use-approval of the location and the establishment of a community center in a 2-story brick store and apartment building, in a B4-3 Restricted Service District) Therefore, as a result of legal and practical impossibilities, the first floor of the subject property would not be entitled to exempt status for the year, 2002, under the facts of this case.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. It is well-settled in Illinois that in order to minimize the harmful effects of such lost revenue costs, and thereby preserve the constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex. rel. Nordland v. Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987) Further, the burden is on the exemption claimant to prove clearly and

conclusively its entitlement to the exemption sought (Gas Research Institute v. Department of Revenue, supra at 434), with the clear and convincing evidentiary standard “defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In the Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996)

ECC failed to provide sufficient evidence that it qualified as an institution of public charity for property tax exemption purposes. Mindful that the characteristics of a public charity are not to be applied mechanically, but, rather, are to be balanced, it is of serious and fatal consequence that there remain so many significant questions regarding the funding and operation of this applicant. Because this record does not allow a finding that applicant is an institution of public charity, a necessary statutory requirement has not been met and, therefore, the applicant’s property cannot be granted an exemption from the imposition of property taxes for the year 2002.

Wherefore, for the reasons stated above, it is recommended that Cook County PIN # 14-05-125-069-000 not be exempt from the imposition of 2002 property tax.

2/8/05

Mimi Brin
Administrative Law Judge